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The Honorable Naomi Reice Buchwald
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
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June 18, 2015

**Re: Tiffany (NJ) LLC, et al. v. Bruce Forbse, et al.,
No. 11 Civ. 4976 (NRB)**

Dear Judge Buchwald:

We represent non-parties Bank of China and Industrial and Commercial Bank of China (the “Banks”). This letter is submitted subject to the Banks’ jurisdictional objections to draw to the Court’s attention a recent opinion and order issued by the Honorable Katherine Polk Failla in *Tiffany (NJ) LLC, et al. v. Qi Andrew, et al.*, No. 10 Civ. 9471 (KPF) (“*Qi Andrew*”), which bears on plaintiffs’ (“Tiffany”) pending motion for a default judgment in the case before this Court (ECF Nos. 83-85). A copy of Judge Failla’s opinion and order is enclosed as Exhibit A to this letter.

In *Qi Andrew*, Tiffany moved for entry of a default judgment, a copy of which is attached as Exhibit B to this letter. Like the proposed default judgment filed in the case before this Court (ECF No. 83-1), in *Qi Andrew*, Tiffany sought a perpetual, post-judgment, worldwide asset freezing injunction, and asked the Court to retain jurisdiction for the purpose of future motions to hold defendants’ “Asset Holders” in contempt of such injunction. Compare ECF No. 83-1 (Proposed Judgment in *Forbse*) ¶¶ 1(i), 10-11, 13, with Ex. B. (Proposed Judgment in *Qi Andrew*) ¶¶ 1(j), 11-12, 14. In an apparent attempt to justify such relief, in *Qi Andrew* as in the case before this Court, Tiffany purported to seek an accounting of profits, but in actuality asked the Court to award large statutory damages “as a proxy for Defendants’ profits.” Compare ECF No. 83-1 (Proposed Judgment in *Forbse*) ¶ 8, with Ex. B (Proposed Judgment in *Qi Andrew*) ¶ 8.

Judge Failla rejected both of the above-referenced provisions of Tiffany’s proposed default judgment. First, Judge Failla held that when an absence of proof makes it difficult to conduct an accounting, the appropriate remedy is statutory damages, which, under the Lanham Act, are awarded “instead of,” not in addition to, nor as a “proxy for,” an accounting of profits. Ex. A. at 15-25. Second, Judge Failla

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held that there was no basis for Tiffany's requested post-judgment asset restraint. *Id.* at 25-29. Judge Failla directed Tiffany to revise its proposed judgment to conform with her opinion. *Id.* at 30. Having rejected these unwarranted provisions, Judge Failla found it unnecessary to address the Banks' jurisdictional objections, *i.e.*, in essence, that those provisions represented an inappropriate attempt to contrive personal jurisdiction over the Banks. *Id.* at 29.

For the reasons stated by Judge Failla, there is no basis for the perpetual, post-judgment, worldwide asset restraint sought by Tiffany in the case before this Court, nor for the purported award of an accounting of profits. In this case as in *Qi Andrew*, therefore, and subject to the Banks' jurisdictional objections, Tiffany should be ordered to excise those unwarranted provisions from the proposed default judgment.

Non-party China Merchants Bank joins in this letter, also subject to its jurisdictional objections.

Respectfully submitted,

/s/ Andrew Rhys Davies

Andrew Rhys Davies

Encl.

Copy (via email, with enclosures):

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